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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/676,520	09/30/2003	Peter J. Cronk	D0968-00044	8333

7590 06/30/2004

DUANE MORRIS LLP  
One Liberty Place  
Philadelphia, PA 19103-7396

EXAMINER
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LEWIS, AARON J

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 06/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/676,520	Applicant(s) CRONK ET AL.	
	Examiner AARON J. LEWIS	Art Unit 3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 September 2003.
- 2a) ☐ This action is FINAL.      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Muchin ('929) in view of Cronk et al. ('265).

As to claim 1, Muchin discloses a method (figs.6,6a) of manufacturing a nasal dilator, comprising: (a) providing a flexible substrate material (47) and a resilient (44) member (b) joining said flexible substrate material to said resilient member to form an integral web; (c) applying a pressure sensitive adhesive layer (48) to a first surface of said integral web which is intended to face an external nasal wall tissue of a wearer; and (d) cutting (54) said integral web to form a final periphery of a nasal dilator suitable for adhesive attachment to an external nasal wall tissue of a wearer, so as to deliver said aromatic substance through inhalation by said wearer while providing a gentle expanding force to said external nasal wall tissue.

The difference between Muchin and claim 1 is the step of coating a second surface of said integral web opposing said first surface with a layer which includes a plurality of microcapsules containing an aromatic substance.

Cronk et al., in a nasal dilator, teach coating a second surface of said integral web opposing said first surface with a layer which includes a plurality of microcapsules

(col.12, lines 44-56+) containing an aromatic substance for the purpose of providing a controlled or extended release of the medicament to the wearer during use.

It would have been obvious to modify the method of manufacturing a nasal dilator of Muchin to include the step of coating a second surface of said integral web opposing said first surface with a layer which includes a plurality of microcapsules containing an aromatic substance because it would have provided a controlled or extended release of the medicament to the wearer during use as taught by Cronk et al..

As to claims 2, said coating step (e) comprises a rolling step (figs.6,6a of Muchin). Inasmuch as Cronk et al. teach adhesively attaching the microcapsules onto a substrate (col.12, lines 53-56), it would have been obvious to employ the rolling step in Muchin to attach the microcapsules using the adhesive strip during the rolling process.

As to claim 3, Cronk et al. teach adhering said microcapsules to said second surface (col.12, lines 54-56) of said integral web.

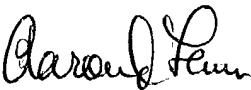
As to claim 4, Cronk et al. (col.11, lines 19-25) teach said aromatic substance comprises: camphor, eucalyptus oil, peppermint oil, menthol, methylsalicylate, bornyl acetate, lavender oil, citrus, an antihistamine, a decongestant, an anti-inflammatory agent, a vitamin, an analgesic, anesthetic, antipruritic, homologues, derivatives, chemical variations or combinations thereof.

As to claim 5, Muchin discloses said cutting step (d) comprises die-cutting (46 and col.5, lines 3-5) to form a final periphery of the dilator.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AARON J. LEWIS whose telephone number is (703) 308-0716. The examiner can normally be reached on 9:30AM-6:00PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, HENRY A. BENNETT can be reached on (703) 308-0101. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
AARON J. LEWIS  
Primary Examiner  
Art Unit 3743

Aaron J. Lewis  
June 25, 2004

As to claim 6, Muchin discloses said joining step (b) comprises combining said flexible substrate material and said resilient member by melt bonding, adhesive bonding (col.4, lines 37-46), ultrasonic bonding or a combination thereof.

As to claim 7, Muchin (figs.6,6a) illustrates said joining step (b) comprises adhesively joining said flexible substrate material and said resilient member as they are fed into an overlapping position in a die (45,46) or roller.

As to claim 8, Cronk et al. teach said microcapsules are joined to said second surface by an adhesive (col.12, lines 54-56).

As to claim 9, Cronk et al. (col.11, lines 22-25) teach said aromatic substance (e.g. menthol) comprises a cooling agent.

As to claim 10, Cronk et al. (col.11, lines 32-33, lines 43-50, lines 66-67; col.12, lines 5-8) teach applying a transdermal medication to said web.

#### ***Information Disclosure Statement***

3. The information disclosure statement filed 11/04/2003 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, the U.S. patent documents have been considered but the foreign patent documents and publications referred to therein have not been considered.

#### ***Conclusion***

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The balance of the art is cited to show relevant nasal dilators.